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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,846	07/20/2001	Trent M. Molter	PES-0055	8797

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EXAMINER

KALAFUT, STEPHEN J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

2010

Office Action Summary

Application No.

09/909,846

Applicant(s)

MOLTER ET AL.

Examiner

Stephen J. Kalafut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-24 and 26-36 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 13-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27, 28, 31, 33, 35 and 36 is/are allowed.
- 6) ☒ Claim(s) 24, 26, 32 is/are rejected.
- 7) ☒ Claim(s) 29, 30 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Tsien *et al.*, for reasons of record.

Claims 26 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially extends beyond" would have indefinite scope.

Claims 29 and 30, for reasons of record, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 27, 28, 31, 33, 35 and 36 are allowed. Claim 36 is former claim 25, previously objected to as having allowable subject matter while depending from a rejected claim, rewritten in independent form. Claims 27 and 28 depend from claim 36 and are thus likewise allowable. Claim 31 is allowed for reasons of record. New claim 35 depends from claim 31 and is likewise allowable. Claim 33 has been amended to overcome its only previous rejection, under §112.

Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The ridges on the frame surface proximate the fluid port are not disclosed by Tsien *et al.*, or taught as an obvious addition thereto.

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Claims 26 and 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action. These claims depend from allowable claims 36 and 31, respectively.

Applicant's arguments filed 10/30/03 have been fully considered but they are not persuasive.

Applicants argue that the manifold passages of Tsien *et al.* do not extend radially (emphasis applicant's) between the fluid port and the inner periphery of the frame. This is not persuasive because Tsien *et al.* shows these channels (16) spreading out as they extend from the ports (8A through 8F), and teach that they "diverge from one another in the direction away from the orifice" (column 2, lines 41-45). Thus, these channels would extend radially from the orifice.

Applicants argue that "'substantially' is a recognized term of art and is definite", and that figures 19 and 20 give guidelines for the breadth of the phrase "substantially extends". The terms "substantial" and "substantially" are not always definite, but may be either definite or not, depending how they are used. When they modify a single value or condition, they would be considered definite, implying a meaning such as "as much as possible" or "as far as can be determined". Thus, a "substantially flat surface", or "substantially fully saturated" would be definite. On the other hand, when they describe a range or a distance, such as "a substantial portion" they would be indefinite, since "substantial" is relative term, not pointed out how much of a "portion" must be included therein. The present term is actually "substantially extends beyond" (emphasis added), which would correspond to this latter example. The present specification does not appear to describe how far "beyond" (something else) something must

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extend, in order to be “substantially beyond” (something else). The present figures 19 and 20 are only seen to exemplify of how far the manifold passages extend “substantially beyond” the length of the openings, without defining the scope of the term.

Claims 1-11 and 13-23 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Claims 12 and 25 have been cancelled.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Kalafut whose telephone number is 571-272-1286. The examiner can normally be reached on Mon-Fri 8:00 am-4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

sjk



STEPHEN KALAFUT
PRIMARY EXAMINER
GROUP 1700